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The NORTH CAROLINA *REGISTER*

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Correction

ISSUE DATE: JULY 14, 1989

Volume 4 • Issue 8 • Pages 455-477



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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(January 1989 - May 1990)

| Issue Date | Last Day for Filing | Last Day for Electronic Filing | Earliest Date for Public Hearing & Adoption by Agency | * Earliest Effective Date |
|------------|---------------------|--------------------------------|---|---------------------------|
| ***** | ***** | ***** | ***** | ***** |
| 01/02/89 | 12/08/88 | 12/15/88 | 02/01/89 | 05/01/89 |
| 01/16/89 | 12/27/88 | 01/03/89 | 02/15/89 | 05/01/89 |
| 02/01/89 | 01/10/89 | 01/17/89 | 03/03/89 | 06/01/89 |
| 02/15/89 | 01/26/89 | 02/02/89 | 03/17/89 | 06/01/89 |
| 03/01/89 | 02/08/89 | 02/15/89 | 03/31/89 | 07/01/89 |
| 03/15/89 | 02/21/89 | 03/02/89 | 04/14/89 | 07/01/89 |
| 04/03/89 | 03/10/89 | 03/17/89 | 05/03/89 | 08/01/89 |
| 04/14/89 | 03/23/89 | 03/31/89 | 05/14/89 | 08/01/89 |
| 05/01/89 | 04/10/89 | 04/17/89 | 05/31/89 | 09/01/89 |
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| 07/03/89 | 06/12/89 | 06/19/89 | 08/01/89 | 11/01/89 |
| 07/14/89 | 06/22/89 | 06/29/89 | 08/13/89 | 11/01/89 |
| 08/01/89 | 07/11/89 | 07/18/89 | 08/31/89 | 12/01/89 |
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| 12/15/89 | 11/22/89 | 12/01/89 | 01/14/90 | 04/01/90 |
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| 02/01/90 | 01/10/90 | 01/18/90 | 03/03/90 | 06/01/90 |
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| 05/01/90 | 04/09/90 | 04/17/90 | 05/31/90 | 09/01/90 |
| 05/15/90 | 04/24/90 | 05/01/90 | 06/14/90 | 09/01/90 |

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Milk Commission intends to amend rule(s) cited as 4 NCAC 7 .0504.

The proposed effective date of this action is November 1, 1989.

The public hearing will be conducted at 10:00 a.m. on August 15, 1989 at Room 6168, Dobbs Bldg., 430 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Written comments, data, opinions and arguments concerning the proposed amendments must be submitted by August 15, 1989, to the North Carolina Milk Commission, 430 N. Salisbury Street, Raleigh, NC 27611, Attention Grady Cooper, Jr., Executive Secretary.

CHAPTER 7 - MILK COMMISSION

SECTION .0500 - MARKETING REGULATIONS

.0504 CLASSIFICATION OF MILK

(a) Class 1. Class 1 shall include the product weight of all fluid milk, fluid milk products, (including products sweetened or flavored), all skim milk and butterfat which is sold or disposed of for consumption or use as processed fluid milk products under any trade name (regardless of grade), except ~~buttermilk~~ skim milk and butterfat disposed of in bulk to commercial food establishments for use on the premises in the production of soup, candy, bakery products or any other nondairy food products, milk shake mix, heavy cream, medium cream, half and half, one-half ounce coffee creamers, eggnog, and any other cream items which are classified in a lower class and military sales approved for Class 1A. The following provisions are also applicable to Class 1:

- (1) Class 1 includes, but is not limited to, the following milk products; pasteurized milk, homogenized milk, lowfat milk, raw milk, whole lactic milk, buttermilk, plain and flake buttermilk, (~~except buttermilk disposed of for the purposes described in (1) of this Rule~~), skim milk, fortified skim milk with added solids, chocolate or flavored milks, or milk drinks, dietary modified milk, sterile milk, filled milk (milk portion only), reconstituted milk, concentrated milk, UHT milk and ultra pasteurized milk.

Statutory Authority G.S. 106-266.8(3),(7),(10).

TITLE 7 - DEPARTMENT OF CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Cultural Resources/Archives and History intends to amend rule(s) cited as 7 NCAC 4Q .0102.

The proposed effective date of this action is November 1, 1989.

The public hearing will be conducted at 9:30 a.m. on August 14, 1989 at Archives and History - State Library Building, 109 E. Jones Street, Raleigh (Room 305).

Comment Procedures: Written comments to Dr. William S. Price, Jr., Director, Division of Archives and History, 109 E. Jones Street, Raleigh 27611 (Room 305) no later than 5:00 p.m., August 11, 1989.

CHAPTER 4 - DIVISION OF ARCHIVES AND HISTORY

SUBCHAPTER 4Q - STATE CAPITOL/VISITOR SERVICES SECTION

SECTION .0100 - GENERAL RULES

.0102 VISITING HOURS

(a) The State Capitol and the Capital Area Visitor Center will be open ~~on~~ Monday through Saturday from 8:00 a.m. to 5:00 p.m., on Saturday from 9:00 a.m. to 5:00 p.m., and on Sunday from 1:00 p.m. to 5:00 p.m.

Statutory Authority G.S. 121-4(9); 121-9(h); 143B-62(2)d.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/ Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26H .0401.

The proposed effective date of this action is November 1, 1989.

The public hearing will be conducted at 1:30 p.m. on August 14, 1989 at North Carolina Divi-

sion of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by August 14, 1989 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on this rule amendment is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0400 - PROVIDER FEE SCHEDULES

.0401 PHYSICIAN FEE SCHEDULE

(e) Notwithstanding any of the foregoing provisions of this Section the fees for the following services shall be paid to all specialties at the levels specified below. (The services are identified by the identifying codes that are set forth in the Physicians' Current Procedural Terminology, Fourth Edition (CPT-4) 1987 manual, published by the American Medical Association.)

| <u>Code</u> | <u>Fee</u> | <u>Code</u> | <u>Fee</u> |
|-------------|------------|-------------|------------|
| 59400 | \$625.00 | 90220 | \$ 70.00 |
| 59410 | 350.00 | 90225 | 40.00 |
| 59500 | 580.00 | 90240 | 14.00 |
| 59501 | 850.00 | 90250 | 16.00 |
| 59520 | 550.00 | 90260 | 22.00 |
| 59521 | 800.00 | 90270 | 28.00 |
| 59540 | 600.00 | 90280 | 40.00 |
| 59541 | 850.00 | 90282 | 15.00 |
| 59560 | 600.00 | 90292 | 20.00 |
| 59561 | 850.00 | 90300 | 30.00 |
| 59580 | 600.00 | 90315 | 40.00 |
| 59581 | 850.00 | 90320 | 50.00 |
| 90000 | 20.00 | 90340 | 20.00 |
| 90010 | 22.00 | 90350 | 20.00 |
| 90015 | 30.00 | 90360 | 25.00 |
| 90017 | 40.00 | 90370 | 30.00 |
| 90020 | 45.00 | 90600 | 25.00 |
| 90030 | 9.00 | 90605 | 25.00 |
| 90040 | 14.00 | 90610 | 50.00 |
| 90050 | 17.00 | 90620 | 60.00 |
| 90060 | 21.00 | 90630 | 60.00 |
| 90070 | 26.00 | 90640 | 18.00 |
| 90080 | 35.00 | 90641 | 18.00 |
| 90200 | 30.00 | 90642 | 20.00 |
| 90215 | 50.00 | 90643 | 26.00 |

In addition, fees for all specialties for early and periodic screening, ~~detection~~ diagnosis and treatment shall be as follows:

Payment based on negotiated fee not to exceed reasonable cost.

| Patient Age | Fee |
|---------------|----------|
| Birth to Four | \$ 30.00 |
| Four and Over | \$ 45.00 |

Statutory Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the NRCD/Environmental Management Commission intends to amend rule(s) cited as 15 NCAC 2B .0216, .0308.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 7:00 p.m. on August 29, 1989 at Western Piedmont Community College, Auditorium, 1001 Burkemont Avenue, Morganton, N.C.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information contact Steve Zoufaly, Div. of Environmental Management, P.O. Box 27687, Raleigh, NC 27611 (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS OF NORTH CAROLINA

.0216 OUTSTANDING RESOURCE WATERS

(e) Listing of Waters Classified ORW with Specific Actions. Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Specific actions to protect the outstanding resource values of the listed waterbodies

PROPOSED RULES

include no new discharges, no flow expansions of existing discharges, and stormwater controls for all development activities requiring a Sediment/Erosion Control Plan as follows:

Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built-upon area will be deemed to comply with this requirement. More stringent requirements may be required by the Environmental Management Commission in very sensitive areas.

High Density Option: Higher density developments will be allowed if stormwater control systems (preferably wet detention ponds) are installed, operated and maintained which control the runoff from all built-upon areas generated from one inch of rainfall. The size of the control system must take into account the runoff from any pervious surfaces draining to the system. More stringent requirements may be required by the Environmental Management Commission in very sensitive areas.

(K) Upper Creek [Catawba River Basin, Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch. The undesignated waterbody (Timbered Branch) and its associated tributaries shall comply with the management strategies in Paragraph (e)(1) of this Rule in order to protect the designated waters as per 15 NCAC 2B .0203.

(L) Steels Creek [Catawba River Basin, Index No. 11-35-2-12-(1)] from source to Little Fork including all tributary waters.

Statutory Authority G.S. 143-214.1.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0308 CATAWBA RIVER BASIN

(c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) August 12, 1979;
- (3) April 1, 1982;
- (4) January 1, 1985;
- (5) August 1, 1985;
- (6) February 1, 1986;
- (7) March 1, 1989;
- (8) May 1, 1989;
- (9) March 1, 1990.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW.
- (2) Steels Creek [Index No. 11-35-2-12-(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Marine Fisheries Commission intends to amend rule(s) cited as 15 NCAC 3B .0305; 3G .0003.

The proposed effective date of this action is November 1, 1989.

The public hearing will be conducted at 3:00 p.m. on August 14, 1989 at Duke University Marine Lab. Auditorium, Beaufort, NC. Business Session will be August 15, 1989, at 9:00 a.m. at the Duke University Marine Lab. Auditorium, Beaufort, N.C.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than August 14, 1989.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3B - FISHERIES REGULATIONS FOR COASTAL WATERS

SECTION .0300 - NET REGULATIONS: GENERAL

.0305 TRAWL NETS

It is unlawful to use trawl nets:

- (1) For the taking of finfish in internal waters, provided that it shall be permissible to take or possess finfish incidental to crab or shrimp trawling in accordance with the following limitations:

- (a) It is unlawful to possess aboard a vessel while using a trawl in internal waters more than 1,000 pounds of finfish except flounder of legal size may be taken and possessed without limit in quantity in internal waters while engaged in crab trawling.
 - (b) Minimum mesh sizes for shrimp and crab trawls are presented in 15 NCAC 3B .0701 and .0801.
 - (c) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance of this Rule.
- (2) For the taking of oysters;
 - (3) In Albemarle Sound and its tributaries;
 - (4) In that area of Shackleford Banks as described in 15 NCAC 3G .0003 (~~as~~) (1);
 - (5) In that area of Pamlico Sound as described in 15 NCAC 3B .0003(2).

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SUBCHAPTER 3G - DESCRIPTIVE BOUNDARIES

.0003 TRAWL NETS PROHIBITED

It is unlawful to use trawl nets:

- (1) In that area south of Shackleford Banks which is east of a line which begins at the navigation aid (buoy or beacon) at the westward end of the Cape Lookout westemmost jetty and running thence N 06° 45' E degrees (M) to the Harkers' Island water tower; The excluded area includes all of Cape Lookout Bight, that area west of the Bight but east of the line above that portion of Bardens Inlet which lies southwestward of a line which begins at the Cape Lookout Lighthouse and runs N 28° 15' W degrees (M) to the southern end of Shackleford Banks.
- (2) In Pamlico Sound, beginning at a point 35° 01' 13" N - 76° 18' 41" W at Marker "2" at Cedar Island Ferry Terminal; thence on a bearing of 096° (M) 6 nautical miles to a point 35° 01' 34" N - 76° 11' 28" W at Hodges Reef Light (HL); thence on a bearing of 209° (M) 2.3 nautical miles to a point 34° 59' 21" N - 76° 12' 25" W at Marker "5" at Wainwright Island; thence on a bearing of 294° (M) to a point 34° 59' 49" N - 76° 14' 37" W at Camp Point; thence westwardly along the shore of Cedar Island to the point of beginning at the Ferry Terminal.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Certified Public Accountant Examiners intends to amend rule(s) cited as 21 NCAC 8A .0301, .0307.

The proposed effective date of this action is November 1, 1989.

The public hearing will be conducted at 10:00 a.m. on August 21, 1989 at N.C. State Board of CPA Examiners, 1101 Oberlin Road, Ste. 104, Raleigh, NC 27605.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than 10:00 a.m. on Monday, August 21, 1989. Anyone planning to attend the hearing should notify the Board office (Ann Hinckle) by noon on Monday, August 14, 1989, whether they wish to speak on the proposal and whether they will speak in favor of the proposal or against it. Anyone speaking on the proposal will be limited to 10 minutes.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8A - DEPARTMENTAL RULES

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 8:

- (13) "Inactive," when used to refer to the status of a person, describes a person who has voluntarily surrendered a certificate of qualification under 21 NCAC 8J .0006 or who is a North Carolina certificate holder with legal residence outside the state of North Carolina and who does not practice accountancy within the state of North Carolina; not receiving any compensation for current personal services in the field of accountancy. "Inactive" also describes a person who is not receiving any compensation for current personal services in

the field of accountancy performed in or for persons, corporations or other entities in North Carolina and who does not use in this state the title "certified public accountant" or other words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a CPA;

Statutory Authority G.S. 93-1.

.0307 PUBLIC PRACTICE OF ACCOUNTANCY OR ACCOUNTING

"Practice of accountancy or accounting" is the performance or offering to perform for remuneration one or more kinds of services which include but are not limited to:

- (1) preparation, auditing or verification of financial transactions, books, accounts or records; or
- (2) preparation, verification or certification of financial, accounting and related statements, including the preparation of tax returns; or
- (3) rendering professional consulting or management advisory services or assistance in or about any and all matters of principle or detail relating to accounting procedure and systems and tax matters; or
- (4) recording, presentation or certification and the interpretation of such service through statements and reports.

(a) A person is engaged in "public practice of accountancy" who:

- (1) holds himself out to the public as a certified public accountant or an accountant; and
- (2) in consideration of compensation received or to be received;
- (3) offers to perform or does perform for other persons;
- (4) services which involve:
 - (A) preparing, auditing or verifying financial transactions, books, accounts, or records, or
 - (B) preparing, verifying or certifying financial, accounting and related statements intended for publication, including preparing tax returns, or
 - (C) rendering professional services or assistance in or about any and all matters of principle or detail relating to accounting procedure and systems, or
 - (D) recording, presenting or certifying and interpreting such service (including tax, consulting or management advisory services) through statements and reports.

(b) Services may be performed on a full-time, part-time or temporary basis in the various accounting fields, including, but not limited to, public accounting, governmental or other not-for-profit accounting, industrial, commercial or financial accounting, taxation and tax-related matters or accounting education.

Statutory Authority G.S. 93-1; 93-12.

TITLE 24 - INDEPENDENT AGENCIES

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Housing Finance Agency intends to amend rule(s) cited as 24 NCAC 1D .0501 - .0503; 1H .0501 - .0503.

The proposed effective date of this action is December 1, 1989.

The public hearing will be conducted at 10:00 a.m. on August 14, 1989 at North Carolina Housing Finance Agency, 3300 Drake Circle, Suite 200, Raleigh, N.C. 27607.

Comment Procedures: Written comments must be submitted to the APA Coordinator by the date of the public hearing. Oral comments may be presented at the hearing.

CHAPTER 1 - N.C. HOUSING FINANCE AGENCY

SUBCHAPTER 1D - SINGLE FAMILY MORTGAGE PURCHASE PROGRAM

SECTION .0500 - HOMEOWNERSHIP ASSISTANCE FUND AND PROGRAM

.0501 CREATION OF FUND

The agency hereby establishes the Homeownership Assistance Fund, hereinafter referred to as the "fund", for the purpose of assisting persons of lower or moderate income in the purchase of affordable housing by reducing the effective cost of homeownership to such persons, and to provide mortgage assistance to eligible households through organizations that aid in the production of affordable housing.

Statutory Authority G.S. 122A-5.7.

.0502 ELIGIBILITY

(a) The fund will be available to assist persons of lower and moderate incomes, income eligible households as defined in Rules .0102 and .0103 Rule .0102 of this Subchapter, who would be

otherwise unable to receive subsidized loans from the agency.

(b) The fund may also provide mortgage assistance to eligible households through organizations that aid in the production of housing that is affordable to income eligible households as described in Paragraph (a) of this Rule. This alternative permits participating organizations to provide mortgage loans to eligible households using the proceeds of the fund received from the agency.

(c) (b) The agency may, from time to time, designate specific counties within the state to receive portions of the proceeds from the fund for the purpose of assisting eligible persons households.

Statutory Authority G.S. 122A-5.7.

.0503 FUND OPERATION AND ADMINISTRATION

(a) The agency will establish a separate Homeownership Assistance Fund consisting of appropriations, or agency revenues designated as the corpus of or other funds allocated to the fund.

(b) The agency will not expend any of the state appropriated corpus of the fund but will invest the state appropriated corpus of the fund and will provide mortgage assistance make homeownership assistance loans from the proceeds of the invested corpus. Any other amounts allocated to the fund may be fully expended, both corpus and interest, or may be withdrawn from the fund by the agency for other eligible activities.

(c) The agency will select in its discretion applicants for first mortgage loans under the agency's single family program for participation in the Homeownership Assistance Program. Eligible borrowers, in addition to receiving a first mortgage loan funded from proceeds of an agency bond issue, participants will receive a second mortgage loan from the agency or a participating organization from the proceeds of the fund. As determined by the agency, this additional loan may be used to provide additional security for eligible loans, to subsidize down payments and monthly housing payments (including first mortgage principal and interest, mortgage insurance, homeowner's insurance and taxes), and to provide any other type of mortgage assistance to participants that the agency deems necessary. The amount of this additional loan will be determined by the agency, in its discretion, considering such factors as the income of the households to be served, family size, income, and ability of the borrower to pay. The agency will, in its discretion, either include the hom-

ownership assistance loan from the fund as part of the first mortgage deed of trust made by the agency under its single family program, or, in the alternative, include the homeownership assistance loan in a second mortgage deed of trust. The loan from the fund, including interest thereon at a rate established by the agency, shall be due and payable by the borrower either upon the resale of the home which is the subject of the loan or upon the death of the borrower and shall be recoverable only from the appreciation of the market price of the financed home during the time it is owned by the borrower.

(d) The agency shall promulgate such forms, contracts, and other documents including but not limited to: deeds of trust, promissory notes, mortgage purchase agreements, and loan agreements as may be necessary to operate the Homeownership Assistance Program financed from proceeds of the fund.

Statutory Authority G.S. 122A-5.7.

SUBCHAPTER III - MULTIFAMILY SUBSIDIZED RENTAL PROGRAM

SECTION .0500 - MULTIFAMILY RENTAL ASSISTANCE FUND AND PROGRAM

.0501 CREATION OF FUND

The agency hereby establishes the Multifamily Rental Subsidy Assistance Fund for the purpose of assisting persons and families of lower or moderate income who cannot otherwise afford to reside in the agency's decent, safe and sanitary multifamily rental units by subsidizing the effective monthly rent to such persons and families and to assist nonprofit organizations producing affordable rental housing.

Statutory Authority G.S. 122A-5(2); 122A-5(3); 122A-5.1; S.L. 1983, c. 971, s. 133.

.0502 ELIGIBILITY

(a) The Multifamily Rental Subsidy Assistance Fund, hereinafter referred to as the Fund, will be available to provide rent subsidies to income eligible households as defined in Rules .0102 and .0103 of this Subchapter, assist persons and families of lower or moderate income desiring to reside in agency financed rental projects to be constructed in counties having cities or towns with a population of less than fifty thousand. The eligible counties will be assigned to designated multi county geographic areas of the state; these areas will be defined in the agency's Notification of Funds Availability and Multifamily Developer's Packet.

(b) This Fund will provide rent subsidies for all units in projects selected in accordance with the Notification of Funds Availability. The incomes of the persons and families residing in these rental units shall not exceed those income limits established by the agency under its Multifamily Unsubsidized Rental Program, as outlined in the Multifamily Developer's Packet. The fund may also be used to provide assistance to nonprofit organizations producing rental housing through the agency's Catalyst Program, as described in Subchapter 1K, Section .0600.

(c) The agency may, from time to time, designate specific counties within the state to receive portions of the proceeds of the fund for the purpose of assisting eligible households.

Statutory Authority G.S. 122A-5(2); 122A-5(3); 122A-5.1; S.L. 1983, c. 971, s. 133.

.0503 FUND OPERATION AND ADMINISTRATION

(a) The agency will establish a separate Multifamily Rental Subsidy Assistance Fund consisting of appropriations or agency revenues designated as the corpus of the Fund.

(b) The agency will not expend any of the state appropriated corpus of the Fund but will invest the state appropriated corpus of the Fund and will make subsidy payments for all units in each project assistance available from the proceeds of the invested corpus. Any other amounts allocated to the fund may be fully expended, both corpus and interest, or may be withdrawn by the agency for other eligible activities.

(c) The agency will select for financing and award the subsidy to the project(s) receiving the highest point evaluation in each multi county, geographic area. The application procedures and the evaluation procedures will be outlined in the Multifamily Developer's Packet, funding applications that meet the criteria established by the agency and described in program application materials.

(d) For projects selected for rental subsidies, a subsidy of up to one hundred dollars (\$100.00) per month per rental unit shall may be granted by the agency. to each selected project. The subsidy shall commence upon the actual occupancy of each unit by the tenant, and shall be paid by the agency to the project until mortgage purchase and amortization begin. Subsidy payments during permanent financing shall may be made by the agency directly to the bond trustee on behalf of the mortgagor or directly to the mortgagor. The subsidy on any unit shall be reduced each time the rent for that unit is increased. The amount of subsidy reduction shall

equal fifty percent of the amount of rent increase. The subsidy payments will continue in effect until such time that the bonds for the project have been retired, or the subsidy payments have been reduced to zero dollars (\$0.00) in accordance with the reduction schedule described in this Rule.

(e) The agency shall promulgate such forms, contracts, and other documents as it may deem necessary to operate the Multifamily Rental Subsidy Program financed from proceeds of the Fund.

(f) Program funds provided to nonprofit organizations through the agency's Catalyst Program must meet the requirements in Subchapter 1K, Rules .0603, .0604 and .0605.

Statutory Authority G.S. 122A-5(2); 122A-5(3); 122A-5.1; S.L. 1983, c. 971, s. 133.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/ State Personnel Commission intends to amend rule(s) cited as 25 NCAC 1D .0102 - .0103, .0210, .0303, .0605, .0705, .0801, .0901, .0906, .0908; 1H .0602, .0623; 1J .0606; repeal rule(s) cited as 25 NCAC 1D .0108, .0202 - .0204, .0302, .0304, .0402, .0404, .0601 - .0603, .0606, .0702, .0704, .0802 - .0803, .0806, .0904 - .0905; 1K .0603 - .0611; and adopt rule(s) cited as 25 NCAC 1D .0211 - .0213, .0308, .0406, .0518 - .0519, .0608 - .0610, .0706 - .0710, .0808, .0910 - .0911, .2201 - .2203; 1E .1007 - .1008.

The proposed effective date of this action is November 1, 1989.

The public hearing will be conducted at 9:00 a.m. on August 15, 1989 at Personnel Development Center, 101 W. Peace Street, Raleigh, North Carolina 27611.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office of State Personnel, 116 W. Jones Street, Raleigh, North Carolina 27603.

CHAPTER I - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0100 - ADMINISTRATION OF THE PAY PLAN

.0102 SALARY RANGES

(a) Each classified position is assigned to a salary range that provides, based on similar employment in the defined labor market: minimum, intermediate, and maximum salary rates that are competitive with rates in the external labor market consistent with the state's ability to pay; and proper relationships within state government employment to maintain internal equity.

(b) Based on labor market demands, salary rates for some classifications may be approved above the standard rates. When a higher salary range (i.e., both the minimums and maximums are raised) is needed to recruit employees to certain areas of the state, the higher range(s) will be known as geographic differentials. When only the entry rates (and not the maximums) need to be higher, the higher rates will be known as special entry rates. Special entry rates may be approved on a geographic basis also.

(c) When geographic differentials are in effect, all salary administration policies are applied as if the classification were at the higher grade. Provisions for applying special entry rates are included in each policy.

Statutory Authority G.S. 126-4.

.0103 STATE SALARY SCHEDULE

Annual salary ranges showing at least the minimum and maximum and intermediate steps pay rates for each job classification subject to the State Personnel Act are filed in the Office of State Personnel and in the personnel office of each state department and institution. Information on current salaries may be obtained at these locations. The salary schedule is adopted by reference October 1, 1984.

Statutory Authority G.S. 126-4(2); 150B-14.

.0108 AVAILABILITY OF FUNDS (REPEALED)

Statutory Authority G.S. 126-4.

SECTION .0200 - NEW APPOINTMENTS

.0202 HIRING RATE (REPEALED)

.0203 JUSTIFICATION (REPEALED)

.0204 TEMPORARY OR PART-TIME EMPLOYEES (REPEALED)

Statutory Authority G.S. 126-4.

.0210 TRAINEE SALARY ADJUSTMENTS

During a trainee appointment an evaluation of the individual's performance and progress on the job is to be made at frequent intervals. As a general guide, salary increases are provided at specified intervals. These increases are not automatic, and are not necessarily limited to the full elapse of specified intervals. Salary adjustments may be either advanced or delayed depending upon the progress of the employee. In cases where salary adjustments have been advanced, normally the trainee's salary will not be adjusted to the permanent rate step one of the range for the regular classification until the employee meets all education and experience requirements for the appointment; the salary can be moved to the regular class rate only when job performance demonstrates achievement of duties, knowledges, and skills at the level of the class, as verified by individual job audit. Adjustments are to be given upon recommendation by the appointing authority and the supervisor that the employee has earned an increase.

Statutory Authority G.S. 126-4.

.0211 SALARY RATE

(a) The minimum rate of pay for a class, or trainee rate where applicable, shall normally be paid a qualified new employee. When a special entry rate has been authorized, that rate may be paid a qualified new employee if the agency has made a decision to use the new rate.

(b) It is intended that agencies make as few appointments above the minimum rate (or applicable special entry rate) as possible. Rates above this may be requested when:

(1) extensive recruitment efforts have not produced qualified applicants; and

(2) the applicant possesses exceptional qualifications above the minimum requirements of the class specification, and operational needs exist which justify filling the position at the salary above the minimum of the range. The additional experience and training must be in the same or closely related area to that stated as acceptable in the class specification. Generally, up to five percent may be considered for each qualifying year of experience above the minimum requirements.

(c) Appointments above the minimum rate are to be avoided if salary inequities would be created. This should be considered very carefully in order to avoid present or future inequities. One consideration must be the policy which would apply if a current employee were promoted to a vacancy. A serious inequity can occur if a new employee is paid at a rate higher than that which

would be paid if a current employee were promoted to the same position.

(d) When an employee is given permanent status after successful completion of either the probationary period or the trainee period, the employee's salary shall be increased to the permanent rate of the range (unless appointment was made at or above this level). The effective date for change to permanent status must be the first day of a pay period. If the employee is in pay status for at least one-half of the workdays and holidays in the pay period, credit will be given for the full pay period.

(e) If the employee is hired initially at an authorized special entry rate, the employee's salary may be increased by five percent above the special entry rate upon successful completion of the probationary period.

(f) If the employee is hired at a salary below an authorized special entry rate because the lower salary is sufficient to attract applicants but not sufficient to retain the employee once experience is gained, an adjustment up to the special entry rate may be made during or at the end of the probationary period or at such time as performance indicates that it is justified.

Statutory Authority G.S. 126-4.

.0212 JUSTIFICATION

(a) Forms PD-105 requesting appointments at rates above the minimum rate must include a statement of reasons and justification for such rates.

(b) If conditions justify appointment above the minimum rate, the agency may elect to use the minimum rate for initial appointment with the option to increase the salary to a rate above the minimum upon successful completion of the probationary period.

Statutory Authority G.S. 126-4.

.0213 TEMPORARY AND PART-TIME EMPLOYEES

(a) The minimum rate shall normally be paid temporary employees. However, a lower rate may be set if reasons are acceptable to the Office of State Personnel. Temporary employees shall be paid hourly rates.

(b) Employees with permanent part-time appointments shall be paid a proportionate annual rate.

Statutory Authority G.S. 126-4.

SECTION .0300 - PROMOTION

.0302 SALARY RATE (REPEALED)

Statutory Authority G.S. 126-4.

.0303 EFFECTIVE DATE

(a) Permanent promotions shall be made effective on the first day of the pay period. Such requests cannot be made effective earlier than the first day of the following month when received after the tenth of the month.

(b) Promotional increases to the permanent rate (or minimum, if applicable) shall be given on the effective date of the promotion.

(c) Increases above the permanent rate, if recommended, should be given on the effective date of the promotion. If funds are not available for the desired amount, additional increases, up to the full allowable amount, may be given at later dates on a current basis. If the agency uses this option, a notation must be entered on the form indicating the amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must reference the original promotion.

(d) Temporary promotions may be made effective on the date than an employee is officially placed in an "acting" capacity.

Statutory Authority G.S. 126-4.

.0304 PERFORMANCE INCREASE ANNIVERSARY DATE (REPEALED)

Statutory Authority G.S. 126-4.

.0308 SALARY INCREASES

The purpose of a promotional pay increase is to reward the employee for the assumption of duties more responsible and more difficult than those in the current position. Subject to the availability of funds, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

(1) Permanent Promotion:

(a) The salary shall be increased to the permanent rate of the grade to which promoted or by five percent whichever is larger. Exceptions:

(i) When internal salary equity or budget considerations in the receiving work unit or agency are necessary, and a specific salary rate or limitation is published in advance of a promotional offer;

(ii) When an employee is demoted with no change in salary and subsequently promoted back to the same level, the salary shall remain unchanged and treated as if the demotion had not occurred;

- (iii) If the employee's salary is above the maximum as a result of a reallocation down, no increase can be given but the salary may remain above the maximum.
- (b) The salary may be increased by more than five percent, the total not to exceed the five percent for each salary grade provided by the promotion. The nature and magnitude of the change in jobs, the need to maintain equity of salaries within the work unit, and other management needs must be given consideration when making such requests.
- (c) If a probationary employee is promoted and the salary is at the minimum rate, the salary must be increased to the minimum rate of the grade to which promoted until the employee is eligible for permanent appointment.
- (d) If the employee is to receive a performance salary increase on the same date as the promotion, the increase may be given before the promotional increase.
- (e) Only in extreme, well-documented circumstances will salary increases be considered which equate to more than five percent for each grade provided by the promotion. Personnel forms must include the justification.
- (f) If an employee is promoted from a class for which there is no special entry rate into a class which has a special entry rate, the employee's salary may be increased by the amount of the promotional increase plus the percent difference between the minimum and the special entry rate authorization.
- (2) Temporary Promotion:
- (a) Temporary promotions may be made when an employee is placed in an "acting" capacity for a period of time. When an employee is placed in an "acting" capacity, at the discretion of management, one of the following may occur:
- (i) The employee may be placed in the higher level position (if vacant) with an understanding that he will return to the former position and salary when the position is filled.
- (ii) A salary adjustment may be given in the present position with the understanding that the salary will be decreased when the "acting" capacity terminates. Indicate in Section 21 of the PD-105 the position number and classification for which the employee is serving in an "acting" capacity. Also include expected duration of "acting" capacity.
- (b) The provisions for salary increases for permanent promotions apply in either case, except that the provision for a mandatory increase may not be applicable.
- (c) The length of time that an employee is in an acting capacity should be limited, and the amount of promotional salary increase determined by the degree of assumption of the higher level duties.

Statutory Authority G.S. 126-4.

SECTION .0400 - DEMOTION

.0402 SALARY RATE (REPEALED)

Statutory Authority G.S. 126-4.

**.0404 PERFORMANCE INCREASE
ANNIVERSARY DATE (REPEALED)**

Statutory Authority G.S. 126-4.

.0406 SALARY RATE

(a) When the employee's current salary falls within the range of the lower class, it may remain the same or be reduced to any salary in the lower range. Exception: When an employee is promoted and subsequently demoted or reassigned to any lower class within one year, the salary shall revert to the salary being paid before the promotion plus any increases that would have been given had that promotion not occurred.

(b) When the employee's current salary is above the maximum of the range for the lower class, the salary shall be reduced at least to the maximum of the lower range.

Statutory Authority G.S. 126-4.

SECTION .0500 - SEPARATION

.0518 VOLUNTARY RESIGNATION WITHOUT NOTICE

An employee voluntarily terminates employment with the state by failing to come to work without giving written or verbal notice to the employing agency. Such a failure shall be deemed to be a voluntary resignation from employment without notice when the employee is absent without approved leave for a period of at least three consecutive, scheduled work days. Separation pursuant to this Rule should not occur until the employing agency has undertaken reasonable efforts to locate the employee and determine when or if the employee is intending to return to work. This provision also applies

when the employee is absent for at least three consecutive, scheduled work days and does not report in to the appropriate supervisory personnel on a regular basis satisfactory to the employing agency. Such a separation is a voluntary separation from state employment and creates no right of grievance or appeal pursuant to the State Personnel Act (G.S. Chapter 126).

Statutory Authority G.S. 126-4(7a).

.0519 UNAVAILABILITY

An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include, but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints, etc. Such a separation is an involuntary separation, although it is not a dismissal, and may be grieved or appealed. The employing agency shall, prior to separation, meet with the employee and inform the employee of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employee shall have the opportunity in this meeting to propose alternative methods of accommodation. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35, but is rather to prove that the employee was unavailable, that the agency made reasonable efforts to accommodate the employee's unavailability and that such efforts were without success. Agencies should make efforts to place an employee so separated pursuant to this Rule when the employee becomes available, if the employee desires, consistent with other employment priorities and rights.

Statutory Authority G.S. 126-4(7a); 126-35.

SECTION .0600 - REALLOCATION

- .0601 REALLOCATION DEFINED (REPEALED)**
- .0602 ASSIGNMENT TO HIGHER GRADE (REPEALED)**
- .0603 ASSIGNMENT TO A LOWER GRADE (REPEALED)**

Statutory Authority G.S. 126-4.

.0605 EFFECTIVE DATE

(a) Reallocation shall be made effective on the first day of the pay period. Forms PD-118 should be submitted to the Office of State Personnel 30 days prior to the proposed effective date to allow adequate time for study and processing of the requests. Requests received after the first day of the month are subject to be made effective no earlier than the first of the following month and requests can be effective only after complete information is available to make a decision. If any party is delayed in carrying out its responsibilities, the employee should not be caused to suffer delay and the effective date will be revised to the most reasonable date consistent with the time that complete information would have been available to make the decision on re-allocation of the position.

(b) Salary adjustments to the permanent rate (or minimum, if applicable) shall be given on the effective date of the reallocation. If funds are not available, the increase shall be given from the first available salary reserve funds and made retroactive to the effective date of the reallocation.

(c) Salary adjustments within the range are optional and, if recommended, should be given on the effective date of the reallocation. If funds are not available for the desired amount, the increase (or additional increases, up to the full allowable amount) may be given at a later date(s) on a current basis. If the agency uses this option, a notation must be entered on the form showing the amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must reference the original reallocation.

Statutory Authority G.S. 126-4.

.0606 PERFORMANCE INCREASE ANNIVERSARY DATE (REPEALED)

Statutory Authority G.S. 126-4.

.0608 REALLOCATION

Reallocation is the assignment of a position to a different classification, documented through data collection and analysis according to customary professional procedure and approved by the State Personnel Director.

Statutory Authority G.S. 126-4.

.0609 REALLOCATION TO A HIGHER GRADE

When an employee's position is assigned to a higher grade as a result of reallocation, subject to the availability of funds, the following shall apply:

- (1) Salaries at the minimum rate shall be adjusted to the new minimum rate.
- (2) Salaries at the permanent rate shall be adjusted to the permanent rate of the new range, and may be adjusted further in accordance with Paragraph (3) of this Rule.
- (3) Salaries within the range may remain the same; or if funds are available and where appropriate, individual salary adjustments may be considered, the total not to exceed five percent for each salary grade provided by the reallocation. Salary equity within the work unit and other management needs must be given consideration when making such requests.
- (4) Only in extreme, well-documented circumstances will salary increases be considered which equate to more than five percent for each grade provided by the reallocation. Personnel forms must include the justification.
- (5) If the employee is to receive a performance salary increase on the same day as the reallocation, the performance increase may be given before a salary adjustment is considered.
- (6) In no case shall the maximum of the higher range be exceeded.

Statutory Authority G.S. 126-4.

.0610 REALLOCATION TO A LOWER GRADE

(a) When an employee's position is assigned to a lower grade, the employee's salary may remain the same if it is within the lower range; or it may be reduced to any salary in the lower range to equitably relate to other employees' salaries in the same or related classifications.

(b) If the employee's salary is above the maximum of the grade to which the position is assigned, one of the following options will apply:

- (1) When reduction in level of the position results from management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance, the salary of the employee may remain above the new maximum as long as the employee remains in the same classification or is promoted to a higher level position. No further increases, other than legislative increases, may be granted as long as the salary remains above the maximum. If, however, a position is available, the level of which would not be as detrimental to the affected employee, and if the employee is

qualified but not placed into the position, then the option in Paragraph (2) of this Rule shall apply.

- (2) When reduction in level of the position results from management's removal of duties and responsibilities from the employee because of change in demonstrated motivation, capability, acceptance of responsibility, or lack of performance, the effect is the same as a demotion and the salary must be reduced at least to the maximum as required by the policy on demotion.

- (c) It is a management responsibility to avoid creation of salary inequities among employees. Each case must be evaluated to determine which of the salary administration alternatives is most appropriate, based on the circumstances as documented by the employing agency. It is a further management responsibility to consider feasible alternatives of job design or employee transfer which would restore the employee to a position at the former grade level in cases not based on employee performance. Feasible alternatives are dependent upon such factors as organizational constraint, program need, and employee qualifications.

Statutory Authority G.S. 126-4.

SECTION .0700 - SALARY RANGE REVISION

**.0702 ASSIGNMENT TO HIGHER GRADE
(REPEALED)**

Statutory Authority G.S. 126-4.

**.0704 PERFORMANCE INCREASE
ANNIVERSARY DATE (REPEALED)**

Statutory Authority G.S. 126-4.

.0705 CLASSES DETERMINED NOT LABOR-MARKET-COMPETITIVE

When critical recruitment or employee retention problems are officially recognized by the State Personnel Director, but salary range revisions are not necessary, feasible or practical (i.e., when range minimums are not competitive, but maximums are adequate), the Director may authorize a higher special entry rate. ~~In such cases, the director may also authorize agencies, subject to the availability of funds, to grant in-range adjustments to present employees as with a salary range revision, except that no salary is allowed above the maximum. Priority shall be given to employees whose salaries are at or below approved hiring rates and to employees whose retention is critical to organizational needs. Salary~~

~~increases shall not be given to employees whose performance does not warrant recognition.~~

Statutory Authority G.S. 126-4.

.0706 ASSIGNMENT TO A HIGHER GRADE

When an employee's position is assigned to a higher grade as a result of salary range revision, subject to the availability of funds and satisfactory employee performance, the following shall apply:

- (1) Salaries at the minimum rate shall be adjusted to the new minimum rate.
- (2) Salaries at the permanent rate shall be adjusted to the permanent rate of the new range, and may be adjusted further in accordance with Paragraph (3) of this Rule.
- (3) Salaries within the range may remain the same; or if funds are available and where appropriate, individual salary adjustments may be considered, the total not to exceed five percent for each salary grade provided by the salary range revision. Salary equity within the work unit and other management needs must be given consideration when making such requests.
- (4) If the employee is to receive a performance salary increase on the same day as the salary range revision, the increase may be given before a salary adjustment is considered.
- (5) When a range revision occurs but the entry rate remains the same because of a previously existing special entry rate, no salary adjustments are allowed if the employee received the increase authorized by the special entry rate.
- (6) In no case shall the maximum of the higher range be exceeded.

Statutory Authority G.S. 126-4.

.0707 EFFECTIVE DATE

(a) Salary adjustments shall be made effective on the first day of the pay period nearest to the effective date of the salary range revision. Salary rates to the permanent rate (or minimum, if applicable) shall be given on the effective date of the salary range revision. If funds are not available, the increase shall be given from the first available salary reserve funds and made retroactive to the effective date of the salary range revision. Employees who are denied an adjustment because of poor performance may receive the adjustment on a current basis if/when performance becomes satisfactory.

(b) Salary adjustments within the range are optional and, if recommended, should be given on the effective date of the salary range revision.

If funds are not available for the desired amount, the increase (or additional increases, up to the full allowable amount) may be given at a later date(s) on a current basis. If the agency uses this option, a notation must be entered on the form indicating the amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must reference the original salary range revision.

Statutory Authority G.S. 126-4.

.0708 SALARY ADMINISTRATION: SPECIAL ENTRY RATES

Special entry rates will be announced as a percent above the minimum and as a rate of pay. Agencies experiencing recruitment and retention difficulties may elect to use the special entry rates. Priority for salary increases shall be given to employees whose salaries are at or below special entry rates. Salary increases shall not be given to employees whose performance is not at a satisfactory level. Salary increases are not entitlements and all are subject to the availability of funds in the agency budget. When the agency decides to use the new rates, the following shall apply:

- (1) Salaries may be adjusted to the special entry rate on the date the agency decides to use the new rate. If funds are not available, but become available at a later time, adjustments may be retroactive.
- (2) Salaries at or above the special entry rate may be adjusted by the percent authorized above the minimum. If funds are not available, but become available at a later time, adjustments may be made on a current basis. If a higher special entry rate is authorized for a class that already has a special entry rate, the employee may receive an adjustment for up to the percent authorized between the two special entry rates.
- (3) When a special entry rate authorization does not include all classes within a class series, consideration for adjustments for employees in the class(es) without a special entry rate will be on an individual basis. Written justification must be submitted with such requests.
- (4) In no case shall the maximum of the salary range be exceeded.

Statutory Authority G.S. 126-4.

.0709 GEOGRAPHIC DIFFERENTIAL

(a) When critical recruitment or employee retention problems in a specific location are officially recognized by the State Personnel Director,

but salary range revisions are not necessary, feasible or practical (i.e., when both minimums and maximums are not competitive in a specific location but are competitive in most locations), the Director may authorize a higher salary range for those specific locations.

(b) Geographic differentials will be announced as a salary grade above the established salary range. Agencies experiencing recruitment and retention difficulties may elect to use the geographic differential. Salary increases shall not be given to employees whose performance is not at a satisfactory level. Salary increases are not entitlements and all are subject to the availability of funds in the agency budget. When geographic differentials are in effect, all salary administration policies are applied as if the classification were at the higher grade.

Statutory Authority G.S. 126-4.

.0710 AVOIDANCE OF SALARY INEQUITIES

In order to avoid inequities, it is particularly important for agency heads to make a study of all salaries within an agency and to give careful consideration to each individual case before recommending salary adjustments.

Statutory Authority G.S. 126-4.

SECTION .0800 - INITIAL CLASSIFICATION

.0801 POLICY

Initial classification occurs in the following situations:

- (1) when a position or a group of positions are classified and brought under the State Personnel Act;
- (2) when a position under the Personnel Act, but not officially classified, is reviewed and a permanent classification and salary range is assigned.

Statutory Authority G.S. 126-4.

.0802 RATE BELOW MINIMUM (REPEALED)

.0803 RATE WITHIN ASSIGNED RANGE (REPEALED)

Statutory Authority G.S. 126-4.

.0806 PERFORMANCE INCREASE ANNIVERSARY DATE (REPEALED)

Statutory Authority G.S. 126-4.

.0808 SALARY RATE

(a) If the employee is given probationary status and the salary is below the minimum rate for the

range assigned, it shall be adjusted to the new minimum rate. If the employee is given permanent status and the salary is below the permanent rate, it shall be adjusted to the permanent rate of the range assigned.

(b) If the employee's salary falls within the range assigned to the position, it shall remain unchanged.

Statutory Authority G.S. 126-4.

SECTION .0900 - TRANSFER

.0901 DEFINITIONS

(c) Promotions or demotions may occur simultaneously with transfers.

Statutory Authority G.S. 126-4.

.0904 SALARY RATE: PERFORMANCE INCREASE ANNIVERSARY DATE (REPEALED)

.0905 BENEFITS TRANSFERRED (REPEALED)

Statutory Authority G.S. 126-4.

.0906 DETERMINING DATE OF TRANSFER

(a) If an employee reports to work the first workday following separation, the releasing agency shall carry the employee on its payroll through the day prior to the effective date of the transfer even though the separation date may fall on a non-workday. An exception may be made when the releasing date falls on a non-workday at the first of the month, in which case the pickup should be made on the first day of the month. If other time is involved, such as holidays or approved vacation, the releasing agency and the receiving agency shall agree upon who will pay the employee.

Statutory Authority G.S. 126-4.

.0908 JOB QUALIFICATIONS

(c) If the transfer is to a lower class and results in a demotion or reassignment, the Demotion/Reassignment Policy will the required qualifications for demotion apply. (See 25 NCAC 1D .0400.)

Statutory Authority G.S. 126-4.

.0910 SALARY RATE

(a) If an employee transfers to a position having the same salary grade, the salary shall remain unchanged. (Exception: The salary may be reduced if there is a lack of sufficient funds or if it results in the creation of a serious internal salary inequity.)

(b) If the transfer is to a higher class and results in a promotion, the Promotion Policy will apply. (See 25 NCAC 1D .0300.)

(c) If the transfer is to a lower class and results in a demotion or reassignment, the Demotion Reassignment Policy will apply. (See 25 NCAC 1D .0400.)

(d) If an employee is in an agency not utilizing an authorized special entry rate and transfers to an agency which does, the special entry rate cannot be used as justification for a salary increase if both work stations are within the same geographic area, i.e., Research Triangle.

(e) If an employee is receiving a higher rate of pay by virtue of working in a position to which a geographic differential applies and transfers to a position to which a geographic differential does not apply (whether in the same geographic area to a position without a differential, or to the same job in a geographic area without a differential), the employee's pay rate must be reduced by the amount of the differential the employee had been receiving.

Statutory Authority G.S. 126-4.

.0911 BENEFITS AND RECORDS TRANSFERRED

(a) When an employee transfers to another agency, all unused sick and vacation leave shall be transferred. If the employee transfers to an exempt position in which leave will not be credited the same as employees subject to the Personnel Act, accumulated vacation shall be paid for in a lump sum. Accumulated sick leave will be transferred.

(b) The personnel file, as defined by statute, shall be transferred to the receiving agency.

Statutory Authority G.S. 126-4; 126-22.

SECTION .2200 - PAYMENT OF SALARY

.2201 PAYMENT OF SALARY TO EMPLOYEES

Every state agency shall pay every employee all wages earned and accruing to that employee on the regular payday for that agency.

Statutory Authority G.S. 126-4(10).

.2202 PAYMENT TO SEPARATED EMPLOYEES

(a) Employees who separate from employment with the state shall be paid all salary due no later than the next scheduled payday.

(b) No money shall be withheld from a final payment to a separated employee except for reasons set forth in this Rule.

(c) The employing agency may withhold money from a final salary payment to a separated employee to recover the cost of state property, equipment, uniforms, tools or other items owned by the state and not returned to the employing agency by the separated employee.

(d) The employing agency shall withhold money from a final salary payment to a separated employee to pay for overdrawn vacation or sick leave or other legally recognized financial obligation to the employing agency outstanding at the time of the employee's separation.

(e) Failure by the separated employee to perform one or more job responsibilities or other work-related acts prior to separation shall not be cause for withholding of any salary due to the employee at separation.

Statutory Authority G.S. 126-4(10).

.2203 POSTING OF NOTICE

Provisions of this Section shall be posted prominently at least in every agency and university personnel office and elsewhere as the employing agency deems necessary.

Statutory Authority G.S. 126-4(10).

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1000 - MISCELLANEOUS LEAVE

.1007 LEAVE WITH PAY FOR TIME TO LOCATE NEW RESIDENCE

It is desirable that an employee make a decision on permanent living arrangements prior to the time of transfer to the new duty station. Leave with pay may be granted up to a maximum of three trips of three days each to locate a new residence. The agency shall consider the employee's effort being exerted, and progress made, in order to determine if three trips are necessary.

Statutory Authority G.S. 126-4.

.1008 LEAVE WITH PAY WHEN MOVING TO NEW RESIDENCE

Leave with pay shall be granted for two days when the employee moves household and personal goods from the old residence to the new one. The agency may grant additional days of leave with pay if the distance between the old and new duty stations warrants this, or if other uncontrollable factors require a longer period of time.

Statutory Authority G.S. 126-4.

SUBCHAPTER III - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

.0602 POSTING AND ANNOUNCEMENT OF VACANCIES

(b) If the decision is made, initially or at any time a vacancy remains open, to receive applicants from within the overall state government workforce, that vacancy shall be listed with the Office of State Personnel for the purpose of informing current state employees of the opening. Such vacancies shall have an application period of not less than seven work days from the time the listing is received by the Office of State Personnel. Each vacancy for internal posting or listing with the Office of State Personnel will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum education and experience standard, the application period and the appropriate contact person. Posting requirements shall not apply to:

- (1) Vacancies which must be used to meet management necessity, for which an agency will not openly recruit. Examples include vacancies committed to a budget reduction, vacancies used for disciplinary transfers or demotions, use of an existing vacancy to avoid reduction in force, transfer of an employee to an existing opening to avoid the threat of bodily harm, and the promotion of an employee into an opening under a formal, pre-existing "understudy arrangement".
- (2) Vacancies for positions which have been designated policy-making exempt under G.S. 126-5(d).
- (3) Vacancies which must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security.
- (4) Vacancies which are not filled by open recruitment, but rather by specific and targeted recruitment of special groups for the Careers in Government, Model Cooperative Education and state government intern programs.

The decision to exercise a vacancy posting exception based upon Paragraphs (b)(1) and (3) of this Rule shall be the responsibility of the agency head. The Office of State Personnel is available upon request to provide counsel and guidance in instances of uncertainty.

Statutory authority G.S. 126-4(4).

.0623 DISCIPLINARY ACTION

When credential or work history falsification is discovered after employment by the state, disciplinary action is required and shall be administered in accordance with the following criteria:

- (2) In all other post-hire discovery cases of false or misleading information, disciplinary action will be taken, but the severity of such action shall be at the discretion of the agency head. The actions to be taken must be at least one, or a combination, of the following: ~~may include~~ dismissal; demotion; reduction in pay; written reprimand.

The agency head's decision, while discretionary, should consider: sensitivity of the agency's mission; sensitivity of the employee's position; effect of the false information on the hiring decision; advantage gained by the employee over other applicants; effect of the false information on the starting salary; and the advantage gained by employee in subsequent promotion and salary increases. Job performance shall not be considered in such cases, nor can decisions be made on the basis of race, creed, color, religion, national origin, sex, age, handicapped condition, or political affiliations.

Statutory Authority G.S. 126-4; 126-30.

SUBCHAPTER IJ - EMPLOYEE RELATIONS

SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

.0606 DISMISSAL

Before an employee may be dismissed on the basis of job performance, the following shall occur:

- (2) A pre-dismissal conference shall be held between the person recommending dismissal and the employee. No third parties shall be present at this conference, including attorneys, other representatives or witnesses. The management representative shall ~~present~~ give the employee ~~with a written notice setting out including~~ the specific reasons for the proposed dismissal and a brief summary of the information which management believes supports the proposed dismissal. The employee shall have the right to respond to that ~~written~~ notice of proposed dismissal in the conference.
- (5) Upon dismissal on the basis of unsatisfactory job performance only an employee may be given up to two weeks pay in lieu of two weeks' notice. In exceptional circumstances, and with the prior approval of the State Personnel Director or his designee, a payment of up to two weeks' salary may be made in lieu of notice. Pay in lieu of notice

shall not apply to dismissals based on personal conduct.

Statutory Authority G.S. 126-4(7a).

SUBCHAPTER IK - PERSONNEL TRAINING

**SECTION .0600 - WORK
PLANNING/PERFORMANCE REVIEW**

- .0603 **POLICY (REPEALED)**
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- .0606 **DOCUMENTATION (REPEALED)**

- .0607 **RELATIONSHIP OF WORK PLANNING
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- .0611 **RESPONSIBILITIES OF MANAGERS
AND SUPERVISOR (REPEALED)**

*Statutory Authority G.S. 121-5(b),(c) and (d);
126-4.*

Upon request from the adopting agency, the text of rules will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Codified" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .1500 - USE OF FORCE

.1502 APPLICATION

(a) Physical Force. Only the amount of force that appears reasonably necessary will be used. Physical force may be used to maintain reasonable order and security within the Division of Prisons only when necessary to prevent escape, injury to citizens, staff or inmates or to prevent damage to property. Except in the event of an emergency which may result in injury or damage to property, physical force should not be used until other methods of restoring order have been attempted.

(b) Crowd Control Devices.

(1) The Division of Prisons recognizes the use of a high pressure fire hose as a crowd control device.

(2) The following provisions will govern the use of tear gas in canisters and all other tear gas weapons:

(A) Tear gas will only be used as a final measure in the maintenance of order and security in the Division of Prisons and only under emergency conditions, unless specifically approved by area administrator institution head. The use of tear gas as a punishment is prohibited. Violations shall subject involved personnel to appropriate disciplinary action.

(B) Tear gas may not be used unless an exit is available or can be made readily available for the inmates following the return of control.

(C) Protective equipment approved by the Director of Prisons will be made available to correctional staff.

(D) Only standard equipment approved by Director, Division of Prisons shall be employed in the control of an emergency.

(E) Tear gas equipment will be maintained and operational at all times. Sufficient quantities of tear gas and tear as ammunition to meet a continuing emergency will be maintained in the arsenal.

(c) Individual Control Devices. The following provisions will govern the use of individual control devices:

(1) Designated correctional officers assigned to units and institutions other than those designated to house youthful offenders will be authorized to carry hand-held billy clubs, riot batons, slap jacks and mace. Correctional officers at institutions designated to house youthful offenders may be authorized to carry mace and/or hand-held billy clubs subject to approval of the manager of the youth services command. Area administrators and institution heads will be responsible for designating the security posts which are authorized to carry individual control devices. Except under emergency conditions, individual control devices will be used only as a final means of maintaining order and security and after other reasonable means of ensuring order have been attempted.

(2) Mechanical restraints or other physical restraints may be used to control inmates who have threatened to mutilate themselves. If the officer in charge deems this action necessary, he will temporarily restrain the inmate and immediately contact the unit physician or area psychologist and the area administrator or institution head. Subject to instructions from the unit physician, the area administrator or institution head may authorize the use of restraints for a period not to exceed 48 hours. The reasons for restraint will be documented on Form DC-141. If the unit physician or area psychologist feels that continued restraint is necessary to prevent self-mutilation after this period has expired, he will refer the inmate to the mental health clinic at Central Prison where he can be adequately supervised and treated.

(3) The officer in charge may take necessary action to secure and maintain control over restrained inmates. Every effort will be made to avoid undue physical hardship. Restrained inmates will be temporarily

- released from their restraints every three hours during the first and second shifts so that they may eat, drink, and take care of their bodily functions. During the third shift, an inmate need not be temporarily released unless he requests release to take care of his bodily functions. However, periodic observation will be required during the night at one hour intervals and documented on Form DC-141.
- (4) The Division of Prisons recognizes the use of a high pressure fire hose as a means for maintaining security. The following limitations apply to the use of a high pressure fire hose. The fire hose will not be used against an inmate in a single cell unless the following conditions have been met:
- (A) The inmate is armed or is reasonably believed to be armed with a weapon which could cause serious injury to himself or correctional staff.
- (B) The inmate has been verbally instructed to surrender the weapon.
- (C) Tear gas has been used in an attempt to disarm the inmate, but the inmate still has access to the weapon. A determination has been made by the officer in charge that the use of a baton is inappropriate under the circumstances.
- (D) The use of the fire hose is personally approved by the institution head or in his absence the officer in charge of the unit or institution.
- (E) The fire hose will be used only in the presence and at the direction of the institution head or in his absence the officer in charge of the unit.
- (F) The fire hose will be used under these circumstances only for the period of time which is required to disarm the inmate. Discharge of water against the head, face, groin and kidneys shall be avoided, if possible, if a fire hose is used against an individual confined in a single cell.
- (G) Water pressure of the fire hose shall be recorded and documented by the institution head or officer in charge in any incident involved in the use of fire hoses.
- (H) After use of the fire hose, the inmate will be examined by correctional medical staff and issued dry clothing.
- (5) The following limitations will also apply to the use of force against a single inmate in a single cell:
- (A) Officers will not be assigned to a single cell segregation cellblock unless they have completed the basic training program at the Criminal Justice Academy.
- (B) Whenever correctional staff remove an individual inmate from a single cell due to the fact that this inmate is causing a disruption, a sergeant (or someone in the chain of command above a sergeant) will be present.
- (C) When a single inmate is removed from a single cell in a medical or psychiatric facility due to a medical or psychiatric problem, appropriate medical supervisor or a sergeant will be present.
- (d) Firearms. The use of firearms will be authorized only during an intended escape, or to prevent serious injury to staff, inmates, or citizens.

*History Note: Statutory Authority G.S.
148-11; 148-46;
Eff. July 1, 1976;
Amended Eff. August 1, 1989; February 1, 1986.*

SUBCHAPTER 2H - RELIGIOUS PRACTICE

SECTION .0100 - ISLAMIC SERVICES AND PRACTICES

.0105 APPROVED RELIGIOUS PROPERTY

(a) Prayer Rugs - Muslim inmates shall be allowed to purchase with their own funds a prayer rug not to exceed 22 inches by 44 inches. Approved order forms and distributors will be utilized for the purchase.

(b) Religious Headcoverings - Inmates may possess and wear kufi prayer caps and yarmulkes as a part of daily dress throughout the Division of Prisons. Other religious headcoverings must be submitted for approval to the Director of Prisons. Religious headcoverings may be worn at all times, except they shall be required to be removed for searches. Inmates may purchase religious headcoverings with their own funds, as with other approved personal clothing items.

*History Note: Statutory Authority G.S.
148-11; 148-24;
Eff. December 1, 1986;
Amended Eff. August 1, 1989.*

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